

On the state of the record, I find that the motion to compel should be granted inasmuch as plaintiff's responses were substantially delayed due to the "disappearance" of Mr. Sadler and Mr. Villa's lack of knowledge as to Sadler's whereabouts.

Fed. R. Civ. P. 37(a)(4)(A) provides that if a motion to compel discovery is granted, or if requested discovery is provided after a motion to compel or sanction is filed, sanctions shall be awarded to the moving party absent a showing of good cause for the non-disclosure by the opposing party. A party against whom a motion to compel is enforced may only avoid payment of sanctions by demonstrating that its position is substantially justified. *See Rickels v. City of South Bend*, 33 F.3d 785, 787 (7th Cir. 1994). Further, "[A] party may not avoid sanctions merely by producing the documents after a motion has been filed." *Illinois Tool Works, Inc. v. Metro Mark Prods., Ltd.*, 43 F. Supp. 2d 951, 960 (N.D. Ill. 1999) (citing *Second Chance Body Armor, Inc. v. Am. Body Armor, Inc.*, 177 F.R.D. 633, 636 (N.D. Ill. 1998)). I find that Sinco has failed to demonstrate that the failure to timely provide discovery was substantially justified. Accordingly, monetary sanctions will be assessed against the plaintiff.

IT IS ORDERED:

1. Defendant's Motion to Compel (#43) is granted.
2. Defendants are entitled to an award of costs and attorney's fees pursuant to Fed. R. Civ. P. 37. The parties shall be heard on the matter of costs and sanctions as follows:
 - a. Defendant may electronically file a motion for costs and attorney's fees, together with an affidavit attesting to the time and expenses incurred in preparing the instant motion to compel discovery, on or before **June 23, 2005**.
 - b. Plaintiff may electronically file a response, if any, to defendant's motion for attorney's fees on or before **July 14, 2005**, at which time the issue of costs and sanctions will be deemed submitted and a written order entered.

DATED June 9, 2005.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**